IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9581 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH AGENCY THRO.PROPRIETOR

Versus

PRAKASH NATHALAL YADAV

Appearance:

1. Special Civil Application No. 9581 of 2004

MR PRABHAKAR UPADYAY for Petitioner No. 1

MR BN VAISHNAV FOR MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/11/2004

ORAL JUDGEMENT

Rule. Mr.B.N.Vaishnav, learned advocate, waives service of rule on behalf of the respondent. At the joint request of the learned advocates for the parties,

the matter is taken up for final hearing today.

2. In this petition, the petitioner has challenged the order dated 27.6.03 passed by the Controlling Authority under the Payment of Gratuity Act by which Application No.1/03 filed by the respondent-workman came to be allowed and the petitioner was directed to pay an amount of Rs.96,900/- with 10 per cent simple interest with effect from 7.7.02. The petitioner has also challenged the order dated 24.11.03 by which the review application preferred by the petitioner against the said order of 27.6.03 was rejected.

3. The petitioner has submitted that the petitioner could not participate in the proceedings before the Controlling Authority since on 16.6.03 when he remained present before the Controlling Authority, he was told that the workman has left and the order is already typed. It is further submitted that the petitioner did not know about the passing of the order dated 27.6.03 and he, therefore, preferred review application upon coming to know about the same. Learned advocate for the petitioner has, therefore, submitted that the matter is required to be remanded to the Controlling Authority for fresh adjudication after giving an opportunity of being heard to the petitioner.

4. Counsel for the respondent points out that in the order dated 27.6.03, the Controlling Authority has observed that the petitioner had not remained present on the date of hearing.

5. Considering the facts and circumstances of the case, it appears that the order is passed ex parte by the Controlling Authority and the petitioner deserves to be given an opportunity to represent his case especially when it is contended that the respondent was not working with the petitioner at all. The fact that the petitioner did not participate in the proceedings cannot be lost sight of and the remand of the proceedings cannot be granted unconditionally.

6. In the facts of the case, the proceedings are remanded to the Controlling Authority for fresh adjudication on the condition that the petitioner shall pay to the respondent 50 per cent of the amount as directed by the order dated 27.6.03 within a period of four weeks from today. The said payment shall be subject to the final outcome of the proceedings. To enable the Controlling Authority to hear the matter afresh, the impugned orders dated 27.6.03 and 24.11.03 are quashed

and set aside and the proceedings are remanded to the Controlling Authority for fresh adjudication after hearing both the sides. I have not expressed any opinion on the merits and demerits of the rival contentions.

7. The petition stands disposed of with the above directions. Rule is made absolute to the above extent.

(Akil Kureshi, J.)
(vjn)